

## **REMARKS**

In view of the above amendments and arguments submitted herewith, Applicant respectfully submits that the pending application is in condition for allowance.

### **I. Status of the Claims**

Claims 13-38 are currently pending. Claim 13 has been amended to specify that the second engaging member moves radially away from said plunger. Support for this amendment can be found, for example, at page 6, lines 24-26 of the specification and Figs. 1A, 1B and 8. Claims 18 and 27 have been amended to specify that the coupling opens to the open position. Support for this amendment can be found, for example, at page 17, lines 4-10 of the specification and Figs. 1A, 1B and 8. Claims 24 and 30 have been amended to more clearly provide antecedent basis for the open position. Claim 33 has been amended to specify that the splitter is formed on the housing. Support for this amendment can be found, for example, at page 4, line 28 through page 5, line 13 of the specification and Fig. 1. Claims 34 and 38 have been amended to place the claims in better U.S. form. No new matter has been added by any claim amendment.

### **II. Double Patenting**

Claims 13-38 have been rejected on the ground of nonstatutory obviousness-type double patenting as obvious over claims 1-9 of U.S. Patent No. 6,387,078. A Terminal Disclaimer for the present application with respect to U.S. Patent No. 6,387,078 is submitted herewith. Accordingly, Applicant respectfully requests withdrawal of the obviousness-type double patenting rejection over U.S. Patent No. 6,387,078.

### **III. Examiner Interview**

Applicant wishes to thank Examiners Price and Lucchesi for the courtesy of the telephone interview granted to Applicant's undersigned attorney on August 11, 2009. As clarified by the Examiners, the Crossman reference discloses a coupling having both an open position and a

closed position, as shown in Figs. 2 and 4 of Crossman. As discussed to overcome Crossman, Applicant has amended claims 13, 18 and 27 to clarify that claimed coupling not only has an open and a closed position but also moves between an open and closed position. Further, as suggested by the Examiner to overcome the teachings of Crossman, Applicant has amended claim 33 to specify that the splitter is formed on the housing.

#### **IV. Rejection Under 35 U.S.C. §112**

Claims 26 and 32 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 26 recites a “means for releasably securing said syringe assembly in said retracted position,” while claim 32 recites a “means for releasably securing said syringe assembly in said first position.” The Examiner contends that there is no written description of the structure which corresponds to the means in the specification. Applicant respectfully traverses this rejection.

The structure associated with the means for releasably securing the syringe assembly are best shown in Figs. 1 and 4 and includes barbs 325 and an aperture 265. As shown in Fig. 1, the syringe assembly is in the retracted position, such that the needle is within the housing. The syringe assembly is secured in the retracted assembly by the barbs 325 of the plunger 300 being retained by the aperture 265 in the housing cap 120. The plunger 300 is released when the barbs 325 are squeezed together thereby allowing the barbs 325 to pass through aperture 265, as best shown in Fig. 4. These structural features for the means for releasably securing the syringe assembly are further described in the specification on page 7, line 5 through page 8, line 10. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 26 and 32.

**V. Rejection Under 35 U.S.C. §102**

Claims 13, 14, 18-24, 26-30 and 32 have been rejected under 35 U.S.C. §102(b), as being anticipated by U.S. Patent No. 5,300,030 ("Crossman"). (Office Action, page 4, lines 16-17). However, on page 6, line 20 through page 8, line 3, the Office Action further sets forth a rejection of claims 32-34, 36 and 37 based on Crossman. As such, Applicant has interpreted the present rejection as rejecting claims 13, 14, 18-24, 26-30, 32-34, 36 and 37 as being anticipated by Crossman. Confirmation of the Applicant's interpretation of which claims are rejected based on Crossman is requested in the next office communication.

Regarding claim 13, the Examiner contends that Crossman discloses each and every element of claim 13, such as "wherein said surface causes said second engaging member to move away from said plunger so that said first and second engaging members are released from one another..." (Office Action, page 5, lines 3-5). At most, the asserted first engaging member (drive member 8) and plunger 27 move distally along a longitudinal axis of the barrel 1, away from the asserted second engaging member (flange 11), when the first engaging member 8 is disengaged from the second engaging member 11.

Claim 13 has been amended to recite "wherein said surface causes said second engaging member to move radially away from said plunger so that said first and second engaging members are released from one another." (Emphasis added). While the Examiner asserts that Crossman discloses that the plunger 27 moves away from the flange 11, Crossman fails to disclose that the second engaging member (flange 11) moves radially away from the plunger 27. Furthermore, the flange 11 is part of the largest diameter portion 7 of the barrel 1 and not configured to move radially away from the plunger 27. More particularly, the flange 11 is not configured to move at all.

Regarding claims 18 and 27, the Examiner contends that Crossman discloses each and every element of claims 18 and 27, such as "said coupling having a closed position (fig. 1-2) and

an open position (fig. 3-4)....” (Office Action, page 5, lines 21-22). While Crossman may arguably disclose both an open and closed position, Crossman fails to disclose that the asserted coupling 8 moves from a closed position to an open position.

Claim 18 has been amended to recite “said first and second engaging members being disengaged from one another when said coupling opens to said open position so that said plunger is disengaged from said first spring; and a surface being defined in said housing to open said coupling to said open position from said closed position after said plunger forces said medicine from said first chamber through said needle.” (Emphasis added). Claim 27 has been amended to recite “said first and second portions being disengaged from one another when said coupling opens to an open position so that said plunger is disengaged from said first spring; and a surface being defined in said housing to open said coupling to said open position from said closed position after said plunger forces said medicine from said first chamber.” (Emphasis added).

Crossman merely discloses a first position, as shown in Fig. 1, wherein the drive member 8 and proximal end of plunger 27 are engaged and a second position, as shown in Fig. 4, wherein the drive member 8 and proximal end of plunger 27 are not engaged. However, in going from Fig. 1 to Fig. 4, the portion of the drive member 8 engaged with the proximal end of the plunger 27 does not open or move. Instead, it is the proximal end of the plunger 27 that comes together to effectuate disengagement from the drive member 8.

Regarding claim 33, the Examiner contends that Crossman discloses each and every element of claim 33, such as “a splitter 21 (fig. 1) attached to the housing distally to the spring-to-plunger coupling; the splitter having a surface for engaging the spring-to-plunger coupling (indirectly by engaging 20, which engages 27) and forcing the spring-to-plunger coupling to disengage from the plunger shaft....” (Office Action, page 7, lines 8-12). However, as discussed and clarified with the Examiner during the August 11, 2009 telephone interview, the splitter disclosed by Crossman for disengaging the spring-to-plunger coupling from the plunger shaft is

enlargements 30. The enlargements 30 are asserted as being attached to the housing through the various other components of the syringe assembly.

Claim 33 has been amended to recite “a splitter formed on the housing distally to the spring-to-plunger coupling; the splitter having a surface for engaging the spring-to-plunger coupling and forcing the spring-to-plunger coupling to disengage from the plunger shaft, thereby disengaging the driver spring from the syringe assembly.” (Emphasis added). In contrast, Crossman fails to disclose the asserted splitter (enlargements 30) being formed on the housing.

For the foregoing reasons, Applicant respectfully submits that Crossman fails to disclose each and every element of amended claims 13, 18, 27 and 33. Accordingly, reconsideration and withdrawal of the rejection of claims 13, 18, 27 and 33 are respectfully requested. In addition, as claims 14-17, 19-26, 28-32 and 34-38 each depend from either of claims 13, 18, 27 or 33, Applicant respectfully submits that claims 14-17, 19-26, 28-32 and 34-38 should be allowed based at least upon their dependency from either independent claim 13, 18, 27 or 33. Accordingly, reconsideration and withdrawal of the rejection of claims 14-17, 19-26, 28-32 and 34-38 are respectfully requested.

Furthermore, with respect to claim 23, the Examiner contends that Crossman discloses that the “coupling further comprises a plurality of openable portions having said second engaging member thereon (portions of 8 interacting with interior of barrel 1, fig. 1-4). . . .” (Office Action, page 6, lines 12-14). Applicant respectfully submits that Crossman fails to disclose any feature whatsoever related to a plurality of openable portions. As such, reconsideration and withdrawal of the rejection of claim 23 are respectfully requested.

#### **VI. Rejection Under 35 U.S.C. §103**

Claims 15 and 16 have been rejected under 35 U.S.C. §103(a), as being unpatentable over Crossman. Claims 15 and 16 depend from independent claim 13. As such, Applicant respectfully submits that claims 15 and 16 should be allowed based at least upon their

dependency from independent claim 13. Accordingly, reconsideration and withdrawal of the rejection of claims 15 and 16 are respectfully requested.

Claims 17, 25 and 31 have been rejected under 35 U.S.C. §103(a), as being unpatentable over Crossman in view of International Patent Application Publication No. WO94/09839 (“STI”). Claims 17, 25 and 31 depend from either of independent claim 13, 18 or 27. As such, Applicant respectfully submits that claims 17, 25 and 31 should be allowed based at least upon their dependency from their respective independent claims. Accordingly, reconsideration and withdrawal of the rejection of claims 17, 25 and 31 are respectfully requested.

Claim 35 has been rejected under 35 U.S.C. §103(a), as being unpatentable over Crossman in view of U.S. Patent No. 2,717,601 (“Brown”). Claim 35 depends from independent claim 33. As such, Applicant respectfully submits that claim 35 should be allowed based at least upon its dependency from independent claim 33. Accordingly, reconsideration and withdrawal of the rejection of claim 35 are respectfully requested.

Claim 38 has been rejected under 35 U.S.C. §103(a), as being unpatentable over Crossman in view of STI. Claim 38 depends from independent claim 33. As such, Applicant respectfully submits that claim 38 should be allowed based at least upon its dependency from independent claim 33. Accordingly, reconsideration and withdrawal of the rejection of claim 38 are respectfully requested.

### **CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and such action is respectfully requested.

Application No. 10/601,212  
Reply to Office Action June 4, 2009

Respectfully submitted,

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September 1, 2009  
(Date)

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